

DOCUMENT RESUME

03858 - [A2/33954]

[Protest against Rejection of Proposal]. B-188549. September 26, 1977. 3 pp.

Decision re: Midwest Specialties; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Regional Procurement Office, Long Beach, CA; Southern Fluid Controls Corp.

Authority: A.S.P.R. 1-903. B-187832 (1976). B-183288 (1975). 54 Comp. Gen. 1077. 4 C.F.R. 20.2.

The protester objected to the rejection of its low offer and alleged that the items to be supplied by the contract awardee may not meet specifications. The allegation that the awardee may provide noncompliant items was academic since acceptable items had already been delivered. The protester's offer of items which satisfied MIL specifications but not the solicitation specifications was an attempt to have the solicitation specifications amended after the closing date for receipt of proposals and the protest on this matter was untimely. (Author/SC)

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DECISION



Herman P.L. #1

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-188549

DATE: September 26, 1971

MATTER OF: Western Valve and Supply Company

DIGEST:

1. Where RFP did not require submission of offers on all items and where by terms of RFP Government reserved right to accept any item or group of items in any offer, contract may be awarded to offeror which agreed to supply specified items within desired delivery period, even though offeror did not submit offer for one item.
2. Protester's allegation that awardee may provide noncompliant valves is academic. More valves have been delivered, inspected and accepted and no discrepancies have been found in valves. Moreover, protester's allegation essentially questions affirmative determination of awardee's responsibility. GAO does not review affirmative determinations of responsibility except where fraud or misapplication of definitive responsibility criteria has been alleged.
3. Where RFP required valves with 1-1/4 diameter stud engagement but protester offered valves using cap screws with 1 diameter effective thread engagement based on awareness that cap screw valves satisfied MIL specifications, cap screw proposal and subsequent efforts to have it found acceptable were, in effect, attempts to have RFP requirement amended after closing date for receipt of proposals and protest is untimely under Bid Protest Procedures.

The Naval Regional Procurement Office (Procurement Office), Long Beach, California, issued request for proposals (RFP) NO0123-77-R-0720 for the procurement of various sizes and quantities of socket weld steam service valves. The RFP required that the valves have a 1-1/4 diameter stud engagement, and the desired delivery date was 30 days after award.

Two proposals were received. With the exception of one item on which it did not offer, Southern Fluid Controls Corporation (Southern Fluid) offered to provide the specified valves within the stated delivery time. Western Valve and Supply Company (Western Valve), the low offeror and protester, offered to provide valves with a 1 diameter effective thread engagement with cap screws within 30 days after award and, as an alternative, valves with the specified 1-1/4 diameter within 150 days after award.

The Procurement Office found that Western Valve's proposal was unacceptable because it took exception to the RFP requirement and compliant valves were not offered with the desired delivery time. It is stated that because of problems created by noncompliant valves, the RFP placed emphasis on the 1-1/4 diameter stud engagement requirement, and the 150-day delivery period for compliant valves was unacceptable because " * * * work stoppages exist regarding ships' installation of these valves."

After contacting other procuring activities which allegedly stated that Southern Fluid has provided " * * * extremely satisfactory performance and timely delivery * * *," the Procurement Office determined that Southern Fluid was responsible pursuant to section 1-903 of the Armed Services Procurement Regulation (1976 ed.). After determining that the prices offered by Southern Fluid were reasonable, the Procurement Office awarded the contract to Southern Fluid without conducting negotiations. The RFP provided for award of the contract on the basis of initial offers received.

Although Southern Fluid did not make an offer on one item, the RFP did not require that offerors submit an offer on all items. By the terms of the RFP, the Government reserved the right to accept any item or group of items in any offer.


Western Valve states that the valves to be supplied by Southern Fluid may not meet specifications and indicates that Southern Fluid may have provided noncompliant valves in the past. In this regard, the Navy states that Southern Fluid's valves under the immediate contract have been delivered, inspected and accepted, and no discrepancies have been found in the valves. Thus, Western Valve's contention that Southern Fluid may provide noncompliant valves is academic. Moreover, Western Valve's allegation essentially questions the affirmative determination of Southern Fluid's responsibility. Our Office does not review affirmative determinations of responsibility except where fraud or misapplication of definitive responsibility criteria has been alleged. Composition Roofers Union Local 8, B-187832, December 17, 1976, 76-2 CPD 507. Neither fraud nor misapplication of definitive responsibility criteria has been alleged or shown.

In its proposal, Western Valve stated that the Secretary of the Navy (NAVSEC) and the Naval Sea Systems Command had approved a valve design with a 1 diameter effective thread engagement when using cap screws. According to Western Valve, NAVSEC, by message dated February 18, 1977, approved such valves for procurement and the context of this message was orally transmitted by the Naval Sea Systems Command to the Long Beach Naval Shipyard, the requiring activity, prior to award. Western Valve also

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states, in substance, that, prior to the issuance of the RFP, the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, had approved the procurement of cap screw valves. Further, Western Valve states that at no time did it offer noncompliant valves because the cap screw valves which it offered satisfied the MIL specification. Consequently, it states that the Navy should not have rejected its low offer to supply cap screw valves because the valves did not have 1-1/4 diameter stud engagements as required by the RFP. Finally, it states that neither whether the proposed valves conformed to the MIL specification nor whether the use of cap screws was part of that specification is at issue. It states that the issue in whether the ignorance of these facts by the Procurement Office and the requiring activity constituted sufficient cause to deny Western Valve an award merely because they had received the information only by telephone just before award and not officially.

However, no matter when the Procurement Office learned that cap screws as offered by Western Valve would be acceptable to the Navy, it is apparent that Western Valve was aware of the acceptability before it submitted its proposal on the RFP and that its cap screw proposal and subsequent efforts to have it found acceptable were, in effect, attempts to have the RFP requirement amended after the closing date for receipt of proposals. In the circumstances, the protest is untimely under the Bid Protest Procedures, 4 C.F.R. § 201.16 (1977), as contended in the agency supplemental report, and is not for consideration. Hewlett-Packard Company, 54 Comp. Gen. 1077, 75-1 CPD 378, affirmed B-183288, August 13, 1975, 75-2 CPD 105.


Acting Comptroller General
of the United States